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IN THE

Supreme Court of the United States

October Term 1955

No. 730

ORREN HULETT, *Petitioner*,

v.

EMMITT L. BRINSON, *Respondent*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Where a District Court denies a request for a remittitur, after substantial argument, and the Court of Appeals, on appeal, finds that the District Court did not abuse its discretion in refusing to order a remittitur and where the evidence on damages far exceeded

the amount of the jury's verdict, and where damages were unliquidated, is any question presented to justify exercise of this Court's certiorari jurisdiction?

2. Where an appellant, through failure to bring before the Court of Appeals a complete record of the trial proceedings, misleads the Court of Appeals into think that the District Court had not entertained a request for a remittitur; and where the Court of Appeals, under such misapprehension, orders the District Court to entertain a request for a remittitur; and where the Court of Appeals, having thereafter discovered the true facts that a request for a remittitur had been entertained and after substantial argument had been denied; is it error for the Court of Appeals to then issue its judgment affirming the decision of the District Court, without awaiting the completion of the second remittitur proceeding?

COUNTER STATEMENT OF THE CASE

The respondent for over 20 years a business man in the field of variety stores was arrested in public and jailed upon two warrants of arrest (embezzlement and trespass) filed by Petitioner. The Respondent was found not guilty by a Trial Magistrate in Virginia. The Respondent brought suit against Petitioner in the United States District Court for the District of Columbia for false imprisonment and for malicious prosecution. In the pleadings and at pre-trial Respondent requested $50,000.00 damages for, inter alia, mental and physical suffering, injury to his name and reputation, permanent injuries to his business. The case was first tried before Judge Bailey but resulted in a hung Jury. The case was again tried before Judge Tamm and the jury returned a verdict of $20,000.00.

On March 19, 1954 Petitioner filed a Motion for a Judgment N.O.V. and for a New Trial based on insufficiency of evidence and excessiveness of damages. Arguments were had on March 26, 1954 at which time Petitioner incorporated in open court a Motion for a Remittitur (Page 36 of the Certified Record of Proceedings before Judge Tamm on March 26, 1954). At this time the Petitioner argued about the disputed testimony and dwelled on the excessiveness of damages, while the Respondent argued that there was evidence before the jury to substantiate the following items of damages: Cost of placing bond for $1,750.00; Defense Counsel and accounting expenses amounting to $1,850.00; loss in the amount of $7,500.00 for premature sale of house at a loss; expenses in the amount of $350.00 for having to move his family out of the community; loss of wages for two years amounting to $12,960.00; loss of income by losing contract with U. S. Post Office in the amount of $2,700.00; loss of destruction of Respondent's business in the amount of $22,000.00, all of these damages exclusive of deprivation of liberty, circumstances of aggravation and mental suffering, physical suffering, injury to fame, reputation and character, general impairment of social, mercantile standing and credit; shame, embarrassment, worry and humiliation caused by criminal proceedings until they remained undetermined. Respondent further pointed out that there was sufficient evidence to establish the connection between the tortious conduct of Petitioner and the loss of credit, the loss of income, that the creditors upon knowing of the criminal proceedings started to put pressure on Respondent and were responsible for the damages alleged. The trial judge after considering all this said

in denying the Motion for a New Trial and the Request for a Remittitur "The Court cannot say that there was not competent evidence upon which the jury might make the finding that they did."

When the Court of Appeals received the record for review it was naked of the transcript of the proceedings of the request for a remittitur, and the pleadings, of course, did not themselves contain a "request for a remittitur". The Court of Appeals was misled by the insufficiency of the record before it in believing that the trial judge did not entertain a motion for a remittitur and therefore issued its Order of June 20, 1955 directing the District Court to entertain a request for a remittitur under a misapprehension. The Respondent corrected the failure of Petitioner by filing the full transcript of the proceedings indicating that the trial judge had in fact entertained such a request for a remittitur on March 26, 1954 and had denied it. When the Court of Appeals became aware that through their Order of June 20, 1955 they were requesting the trial judge to entertain a request for a remittitur identical to one already denied, there was issued without further explanation the Decision of December 22, 1955 indicating therein at page 3a (Petitioner's Brief) "The trial court was also requested to order a remittitur."

The Petitioner then Petitioned the Appellate Court for a Rehearing and it was denied. After the Appellate Court mailed certified copy of its opinion to the District Court in lieu of the mandate, and when the District Court was about to hear a Motion for Judgment Against Surety on a Supersedeas Undertaking, the Petitioner requested the mandate be recalled to enable him to file this Petition, we believe with the pur-

pose to enable him to delay proceedings and engage the respondent in further litigation in the State of Michigan.

REASONS FOR REFUSING THE WRIT

The present Petition contains no special or important reasons why the Writ should be granted. The issues presented are neither novel nor transcendental. The Petition represents nothing more than an attempt by a losing party in a malicious prosecution action to obtain another appellate review of the judgment against him and also, we believe, represents an effort to delay execution of the judgment against him.

1. The $20,000.00 jury verdict was the result of a well conducted trial with a jury carefully instructed as to the law of the action and of the damages. The relief requested in the pleadings and at the pre-trial conference and as reflected in the instructions to the jury substantiate the jury verdict. On March 26, 1954 upon a hearing before the trial judge on a Motion for a Judgment N.O.V. or for a New Trial combined with a request for a remittitur, the trial judge heard arguments and considered the matter of damages and the excessiveness of the verdict and the insufficiency of the evidence and concluded that the verdict was substantiated by the evidence. The Court of Appeals concluded that the "able trial judge" did not abuse his discretion in failing to order a remittitur. The Appellate Court, in reviewing the discretionary powers of the trial court, properly made no effort to judge the credibility of the witnesses or weigh conflicting evidence but took the view of evidence most favorable to the prevailing party and upheld the verdict as

supported by substantial evidence. This is clearly the appropriate method and scope of review. (Loews vs. Cinema Inc. 347 U.S. 976) W. W. Neese Administrator vs. Southern RR Co. No. 28, 100 Lawyers Edition 93, and Snyder vs. United States No. 40 United States Supreme Court decided December 5, 1955.

2. It is our contention that the Petitioner misled the Appellate Court in believing that the trial judge had not entertained a request for a remittitur when the Petitioner failed to include in the Appellate Record the proceedings had before the trial judge on March 26, 1954 upon a Motion for a Judgment N.O.V. and for a New Trial at which time the Petitioner requested the trial judge in open court to consider a remittitur. The Appellate Court, therefore, issued its Order of June 20, 1955 under a misapprehension of fact and instructed the trial court to entertain a remittitur. It is our contention that once the Court of Appeals discovered the true facts that a request for a remittitur had been already entertained and after substantial argument had been denied, that it was within their power to correct the embarrassing position they had been placed by Appellant, and that there was therefore no need to await the completion of the second remittitur proceedings. It is our contention that the procedural conduct of the Court of Appeals was appropriate and that their judicial query into the case had been answered to their satisfaction. The Petitioner, therefore, has no cause to complain that the Decision of the Court of Appeals of December 22, 1954 deprived him of a second ruling on the same request for a remittitur.

3. Petitioners argument that the relief requested in the complaint was limited by the pre-trial order is without merit and this legal theory was never brought before the Appellate Court for consideration.

REQUEST FOR DAMAGES FOR DELAY

Respondent hereby moves the Court for an Award of Damages pursuant to Rule 56(4) of the Rules of this Court, if the Petition for Writ of Certiorari be denied upon the ground that it is manifest that there was no ground for granting such a writ.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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